

## Title 18. State Board of Equalization

### NOTICE IS HEREBY GIVEN

The State Board of Equalization, pursuant to the authority vested in it by section 15606(a) of the Government Code, proposes Regulation 1671.1, Discounts, Coupons, Rebates, and Other Incentives, in Title 18, Division 2, Chapter 4, of the California Code of Regulations, relating to sales and use tax. A public hearing on the proposed regulations will be held in Room 121, 450 N Street, Sacramento, at 1:30 p.m., or as soon thereafter as the matter may be heard, on March 20, 2007. At the hearing, any person interested may present statements or arguments orally or in writing relevant to the proposed regulatory action. The Board will consider written statements or arguments if received by March 20, 2007.

### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Under the Sales and Use Tax Law, the measure of tax for the sales tax (gross receipts) and the use tax (sales price) includes the total amount received with respect to the sale, with no deduction for the cost of materials, service, or expense of the retailer passed on to the purchaser, unless there is a specific statutory exclusion. Pursuant to Revenue and Taxation Code (RTC) sections 6011(b)(2) and 6012(b)(3), respectively, sales price and gross receipts also include any amount for which the seller gives a credit to the purchaser. However, pursuant to RTC sections 6011(c)(1) and 6012(c)(1), respectively, sales price and gross receipts do not include cash discounts allowed and taken on sales. The measure of tax is not limited to amounts collected from the customer. For example, in the case of rebates tied to specific price reductions at the time of retail sale, the gross receipts received by a retailer are regarded as the amount charged the customer, plus the amount received pursuant to the relevant rebate agreement. Retailers who receive a certain reimbursement from manufacturers through coupon rebates or through rebate revenues from a third party in exchange for a required reduction in the selling price of a product (e.g., under certain manufacturer's "buy-down" programs) are liable for tax on the amount received from the third party. In these transactions, the retailer receives a portion of its gross receipts (or sales price) from the customer in the form of a reduced payment for tangible personal property, and another portion of its gross receipts (or sales price) from the third party upon redemption of some type of indicia or upon fulfillment of the conditions of the third-party agreement.

Regulation 1671.1, Discounts, Coupons, Rebates, and Other Incentives, is hereby proposed to interpret, implement and make specific Revenue and Taxation Code sections 6011 and 6012. The Board is proposing the regulation to clarify: (1) the general application of tax to transactions involving discounts, coupons, rebates, and other incentives; and (2) the specific application of tax to revenue from discounts, coupons, rebates, and other incentives that retailers receive from persons other than purchasers.

### COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The State Board of Equalization has determined that the proposed amendments do not impose a mandate on local agencies or school districts. Further, the Board has determined that the amendments will result in no direct or indirect cost or savings to any State agency, any costs to local agencies or school districts that are required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of Title 2 of the Government Code or other non-discretionary

costs or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

#### EFFECT ON BUSINESS

Pursuant to Government Code section 11346.5(a)(7), the State Board of Equalization made an initial determination that the adoption of Regulation 1671.1 will have no significant statewide adverse economic impact directly affecting business.

The adoption of the proposed regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

The regulation as proposed will not be detrimental to California businesses in competing with businesses in other states.

The proposed regulation may affect small business.

#### COST IMPACT ON PRIVATE PERSON OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

#### SIGNIFICANT EFFECT ON HOUSING COSTS

No significant effect.

#### FEDERAL REGULATIONS

Regulation 1671.1 as proposed has no comparable federal regulations.

#### AUTHORITY

Section 7051, Revenue and Taxation Code.

#### REFERENCE

Sections 6011 and 6012, Revenue and Taxation Code.

#### CONTACT

Questions regarding the substance of the proposed regulation should be directed to Mr. Randy Ferris, Tax Counsel IV, telephone (916) 322-0437, e-mail [randy.ferris@boe.ca.gov](mailto:randy.ferris@boe.ca.gov), or by mail at State Board of Equalization, Attn: Randy Ferris, MIC:82, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action

should be directed to Diane Olson, Regulations Coordinator, telephone (916) 322-9569, fax (916) 324-3984, e-mail [diane.olson@boe.ca.gov](mailto:diane.olson@boe.ca.gov), or by mail at State Board of Equalization, Attn: Diane Olson, MIC:80, P.O. Box 942879, Sacramento, CA 94279-0080.

#### ALTERNATIVES CONSIDERED

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed, or be as effective and less burdensome to affected private persons than the proposed action.

#### AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an initial statement of reasons and an underscored version (express terms) of the proposed regulation. Both of these documents and all information on which the proposal is based are available to the public upon request. The Rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulation are available on the Internet at the Board's Web site <http://www.boe.ca.gov>.

#### AVAILABILITY OF FINAL STATEMENT OF REASONS

The final statement of reasons will be made available on the Internet at the Board's Web site following its public hearing of the proposed regulation. It is also available for your inspection at 450 N Street, Sacramento, California.

#### ADDITIONAL COMMENTS

Following the hearing, the State Board of Equalization may, in accordance with the law, adopt the proposed regulation if the text remains substantially the same as described in the text originally made available to the public. If the State Board of Equalization makes modifications which are substantially related to the originally proposed text, the Board will make the modified text, with the changes clearly indicated, available to the public for fifteen days before adoption of the regulation. The text of any modified regulation will be mailed to those interested parties who commented on the proposed regulatory action orally or in writing or who asked to be informed of such changes. The modified regulation will be available to the public from Ms. Olson. The State Board of Equalization will consider written comments on the modified regulation for fifteen days after the date on which the modified regulation is made available to the public.